

AG Contract No.: KR04-0472TRN
ADOT ECS File No.: JPA 04-024
Project No.: HRF-SED-0-801
Project: Dry Creek Road
TRACS No.: HF101 01C
Budget Source Item No.: N/A
HURF Exchange Program

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF SEDONA

THIS AGREEMENT is entered into 20th August, 2004, pursuant to Arizona Revised Statutes, § 11-951 through § 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF SEDONA, ARIZONA, acting by and through its MAYOR and CITY COUNCIL (the "City").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 and § 28-6993(g) to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The City is empowered by Arizona Revised Statutes § 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.

3. The State has approved the exchange of \$313,000.00 Highway User Revenue Funds (HURF) in Fiscal Year 2004 to the City for overlaying two segments [(from Highway 89A to White Bear Road) and (Color Cover Road intersection and the Sedona city limits)] of rubberized asphalt with 2 inches thickness on Dry Creek Road, such funds will be repaid to the State by withholding from Northern Arizona Council of Governments (NACOG) federal funds and the obligation authority for federal funds in the amount of \$324,692.00 in Fiscal Year 2004.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

NO. 27018
Filed with the Secretary of State
Date Filed: 08/20/04

Janice K. Brewer
Secretary of State

By: Darryl D. Haeserwald

II. SCOPE OF WORK

1. The City will:

a. Provide design plans, specifications and such other documents and services required for construction bidding and construction.

b. Call for bids and award one or more construction contracts for the project. Administer same, and make all payments to the contractor(s). Be responsible for any additional funds required to complete the project and for any contractor claims for extra compensation due to delays or whatever reason. Comply with all applicable State laws, rules and regulations.

c. Invoice the State for thirty percent of the project construction cost, at the start of construction.

d. Invoice the State for thirty percent of the project construction cost, at the thirty percent and sixty percent project construction completion stages.

e. Upon completion, approve and accept the project as complete and provide maintenance. Provide the State with a letter documenting the notice of the approval and acceptance of the project.

f. Invoice the State for the remaining ten percent of the project construction cost at the one hundred percent project completion stage after the City, NACOG, and the State (ADOT) representatives have completed final project review.

2. The State will:

a. Within 30 days after receipt and approval of an invoice, pay for thirty percent of the project construction cost at the start of construction, and for thirty percent of the project construction cost at the thirty percent project construction completion stage, and for thirty percent of the project construction cost at the sixty percent project construction completion stage, and pay ten percent upon completion of construction.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this Agreement, or for any resulting construction project. The City, in regard to the City's relationship with the State only, assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims. It is understood and agreed that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof, shall be solely the liability of the City and that to the extent permitted by law, the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or nonperformance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees the City, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation and attorneys' fees.

2. The terms, conditions and provisions of this Agreement shall remain in force and effect until completion of said project, except any provisions for maintenance shall be perpetual, unless assumed by another competent entity. Further, this Agreement may be canceled at any time prior to the award of the project construction contract, upon thirty (30) days written notice to the other party. It is understood and agreed that, in the event this Agreement is terminated by the City, the State shall in no way be obligated to maintain said project.

3. This Agreement shall become effective upon filing with the Secretary of State.

4. This Agreement may be canceled in accordance with Arizona Revised Statutes § 38-511.

5. The provisions of Arizona Revised Statutes § 35-214 are applicable to this contract.

6. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

7. Non-Availability of Funds: Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

8. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

9. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:


Arizona Department of Transportation
Joint Project Administration
205 South 17th Avenue, Mail Drop 616E
Phoenix, AZ. 85007
FAX (602) 712-7424

City of Sedona
Public Works Department
Attn: Director / City Engineer
102 Roadrunner Dr.
Sedona, AZ 86336

10. Pursuant to Arizona Revised Statutes § 11-952 (D), attached hereto and incorporated herein, is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

CITY OF SEDONA

By 
PUD COLQUITT
Mayor


Date July 28, 2004

STATE OF ARIZONA
Department of Transportation

By 
DALE BUSKIRK, Division Director
Transportation Planning Division

Date 8/12/04

ATTEST

By 
PAT SULLIVAN
City Clerk

Date AUGUST 5, 2004

RESOLUTION NO. 2004- 14

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SEDONA, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION REGARDING THE FUNDING OF IMPROVEMENTS TO DRY CREEK ROAD AND PROVIDING AUTHORIZATION FOR THE MAYOR TO EXECUTE SAID AGREEMENT.

WHEREAS:


The City of Sedona and the Arizona Department of Transportation desire to cooperate and join resources in constructing improvements to Dry Creek Road. To effectuate the entire agreement between the parties, an intergovernmental agreement setting forth all the terms and conditions of the proposed turn back has been drafted.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND THE COUNCIL OF THE CITY OF SEDONA, ARIZONA, THAT:


The City of Sedona, through its Mayor and Council, hereby approves the Intergovernmental Agreement with the Arizona Department of Transportation, Agreement No. JPA-04-024, concerning the funding of improvements to Dry Creek Road.

The Mayor is authorized to execute said agreement on behalf of the City of Sedona, Arizona.

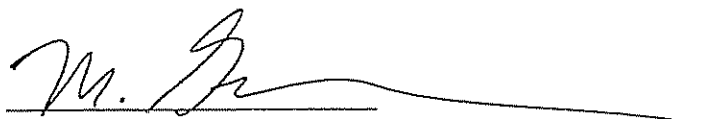
PASSED AND ADOPTED by the Mayor and Council of the City of Sedona, Arizona, this 27 day of July, 2004.


Pud Colquitt, Mayor

ATTEST:


Pat Sullivan, City Clerk

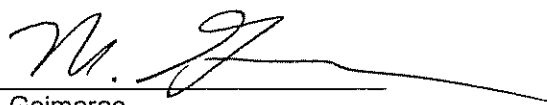
APPROVED AS TO FORM:


City Attorney

APPROVAL OF THE CITY OF SEDONA ATTORNEY

I have reviewed the above referenced intergovernmental agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF SEDONA, an agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 28 day of July, 2004.



Michael Goimarac
City Attorney



TERRY GODDARD
ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

CIVIL DIVISION
TRANSPORTATION SECTION
WRITER'S DIRECT LINE: 602.542.8855

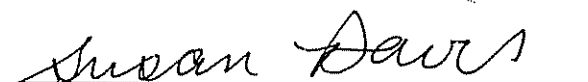
INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR04-0472TRN (**JPA 04-024**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: August 16, 2004

TERRY GODDARD
Attorney General


SUSAN E. DAVIS
Assistant Attorney General
Transportation Section